

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

LAWRENCE JOHNSON, : **CIVIL ACTION NO. 1:13-CV-1866**

Plaintiff : **(Chief Judge Conner)**

v. :

R. HOLT, et al., :

Defendants :

LAWRENCE JOHNSON, : **CIVIL ACTION NO. 1:15-CV-336**

Plaintiff : **(Chief Judge Conner)**

v. :

SULLIVAN, et al., :

Defendants :

ORDER

AND NOW, this 30th day of June, 2015, upon consideration of the report (Doc. 74) of Chief Magistrate Judge Martin C. Carlson issued in Johnson v. Holt, No. 1:13-CV-1866, recommending that the court grant in part and deny in part *pro se* plaintiff's motion (Doc. 52) to alter or amend judgment, wherein Judge Carlson opines that the court should grant the motion to the extent it pertains to plaintiff's previously dismissed mail handling claims in Johnson v. Holt, No. 1:13-CV-1866, in light of defendants' concession that plaintiff did in fact properly exhaust said claims, (see Doc. 74 at 8-9), but deny the motion in all other respects, (see *id.* at 9-12), and wherein Judge Carlson also recommends that Correctional Officer Vogel be added as a defendant to the medical deliberate indifference claims asserted in Johnson v.

Sullivan, 1:15-CV-336, and also be added as a defendant in Johnson v. Holt, No. 1:13-CV-1866, pursuant to the amended complaint (Doc. 49) filed therein, and the court noting that plaintiff filed objections (Doc. 82)¹ to the report, and, following an independent review of the record, the court being in agreement with the Magistrate Judge's recommendation that the court reinstate the previously dismissed mail handling claims and add defendant Vogel as a defendant to the medical deliberate indifference claims asserted in Johnson v. Sullivan, 1:15-CV-336, but finding that plaintiff does not state claims for denial of access to the courts, retaliation, or mail handling violations against defendant Vogel to warrant his inclusion as a defendant with respect to those claims in Johnson v. Holt, No. 1:13-CV-1866, and that plaintiff does not request such relief in his motion and brief, (see Docs. 52-53), and the court concluding that plaintiff's objections are without merit and squarely addressed by the report, it is hereby ORDERED that:

1. The report (Doc. 74) of Chief Magistrate Judge Martin C. Carlson is ADOPTED except to the extent it recommends adding defendant Vogel as a defendant in Johnson v. Holt, No. 1:13-CV-1866.
2. Plaintiff's motion (Doc. 52) to alter or amend judgment is GRANTED in part and DENIED in part as follows:

¹ When a party objects to a magistrate judge's report and recommendation, the district court performs a *de novo* review of the contested portions of the report. See Behar v. Pa. Dep't of Trans., 791 F. Supp. 2d 383, 389 (M.D. Pa. 2011) (citing Sample v. Diecks, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989); 28 U.S.C. § 636(b)(1)(c)). The court reviews uncontested portions of the report for "clear error on the face of the record." Cruz v. Chater, 990 F. Supp. 375, 376-78 (M.D. Pa. 1998).

- a. Plaintiff's previously dismissed mail handling claims against defendants Warden Holt, Associate Warden Dunbar, Inmate Systems Managers Farley and Trentley, and Correctional Officers Mazza, Bushinski, Kalogna, Potter, Bond, and Beck, in Johnson v. Holt, No. 1:13-CV-1866, are REINSTATED.
- b. The Clerk of Court is directed to add defendant Correctional Officer Vogel as a defendant for purposes of the medical deliberate indifference claims asserted in Johnson v. Sullivan, No. 1:15-CV-336.
- c. The claims identified in paragraphs 2 and 3 above are reinstated and added without prejudice to defendants' ability to file a renewed motion to dismiss said claims on the merits.

3. This matter is REMANDED to Chief Magistrate Judge Carlson for further proceedings.

/S/ CHRISTOPHER C. CONNER

Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania